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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,698	07/07/2001	Frederick J. Lang	659/1721	4892
757	7590	06/03/2004	EXAMINER	
BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			WACHTEL, ALEXIS A	
			ART UNIT	PAPER NUMBER
			1764	

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/900,698

Applicant(s)

LANG ET AL.

Examiner

Alexis Wachtel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-54, 56 and 58-73 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-54, 56, 58-73 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Detailed Action

Response to Amendment

1. Applicant's amendment and accompanying Remarks filed 3-1-2004 have been entered and carefully considered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-7,56 and 61-66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-7,56 and 61-66 are rejected as being indefinite because they fail to set forth the composition or structure of the wet wipe and only claim properties of tensile strength. An unclaimed component accounts for the claimed properties. In particular, this component is quite clearly the binder used to hold the wet wipe together. Claims that merely set forth physical characteristics desired in an article, and not setting forth specific compositions which would meet such characteristics are invalid as vague, indefinite, and functional since they cover any conceivable combination of ingredients either presently existing or which might be discovered in the future. Ex parte Slob (PO BdApp) 157 USPQ 172.

Claim Rejections - 35 USC § 102

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1,24-28 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,713,414 B1 to Pomplun et al.

Pomplun et al teaches an ion sensitive polymer useful as a binder material for wet wipes (Col 3, lines 36,37, 59-66).

Desirably, the wet wipes have an in-use tensile strength of at least 300g/in, and a tensile strength of less than about 20g/in after being soaked in water having a concentration of Ca^{2+} and or Mg^{2+} ions of about 200ppm for about 1 hour (Col 38, lines 24-43). The Examiner notes that it is reasonable to assume the wet wipes have a tensile strength of less than about 70 g/in after being soaked in water having a concentration of multivalent ions of about 10 ppm for about 1 hour. The technical basis for this assumption rests in the fact that the wet wipe is disclosed as having a tensile

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strength of 20g/in after being soaked in water having a concentration of Ca^{2+} and or Mg^{2+} ions of about 200ppm for about 1 hour thus clearly demonstrating that at a 10ppm concentration of multivalent ions, the wet wipe will have a tensile strength no greater than 20g/in.

The ion sensitive polymers used are acrylic acid and methacrylic acid and an alkyl acrylate (Col 7, lines 24-28). Additionally, a co-binder such as poly(ethylene-vinyl acetate) can be used together with the ion sensitive polymer (Col 13, lines 37-67, Col 14, lines 1-2).

Claim Rejections - 35 USC § 102/103

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 1-7, 11-13, 18-21, 23, 56, 58-66, 70, 72, 73 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US 6,423,804 to Chang et al.

Chang teaches an ion-sensitive polymer (Col, 2, lines 59-61) that is useful as a binder for use in wet wipes (Col 3, lines 5-16). The wet wipes are made of nonwoven fabric that can be made from cotton, linene jute, hemp, wool, wood pulp, etc (Col 7, lines 45-65). The wet wipes are packaged with a wetting agent (Col 9, lines 36-43). The wet wipes can be stored in an impermeable package and saturated with a salt solution containing between 0.5 to 3.0 wt percent of one or more monovalent salts such as KCl or NaCl (Col 9, lines 53-58). Desirably, the wet wipes have an in-use tensile strength of at least 300g/in, and a tensile strength of less than about 20g/in after being soaked in water having a concentration of Ca^{2+} and or Mg^{2+} ions of about 200ppm for about 1 hour (Col 10, lines 1-17). The Examiner notes that it is reasonable to assume the wet wipes have a tensile strength of less than about 70 g/in after being soaked in water having a concentration of multivalent ions of about 10 ppm for about 1 hour. The technical basis for this assumption rests in the fact that the wet wipe is disclosed as having a tensile strength of 20g/in after being soaked in water having a concentration of Ca^{2+} and or Mg^{2+} ions of about 200ppm for about 1 hour thus clearly demonstrating that at a 10ppm concentration of multivalent ions, the wet wipe will have a tensile strength no greater than 20g/in.

Chang et al fails to explicitly teach the claimed cup crush or opacity amount, it is reasonable to presume that said limitations are inherent to the invention. Support for

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said presumption is found in the use of a wet wipe nonwoven wipe having the claimed in use tensile strengths as well as tensile strengths after being soaked in the claimed concentration of multivalent ions for the claimed amount of time. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed cup crush of the nonwoven wet wipe on immersion of said nonwoven wipe in varying concentration of multivalent ions in water would obviously have been provided by the process disclosed by Chang et al. The burden is upon the Applicant to prove otherwise. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 8-10, 22 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,423,804 to Chang et al.

Regarding claims 8-10 and 71, Chang fails to teach employing a wet wipe having the claimed thickness. However, since the wipe thickness is directly proportional to the strength of the wipe, it would have been obvious for one of ordinary skill to have determined the optimal wipe thickness through the process of routine experimentation.

Regarding claim 22, Chang as set forth above fails to teach that the claimed amount of activating compound is used. However, since NaCl or KCl is used to prevent the dispersion of the wet wipe while it is in the wetting composition, it would have been obvious to one of ordinary skill to have increased the amount of NaCl or KCl used to an amount greater than or equal to the claimed amount since doing so would ensure that the wet wipe functions as intended when in use.

10. Claims 32-54 and 67-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,423,804 to Chang et al in view of US 5,648,083 to Bliezner.

Per claims 32,51-53,67-69, Chang et al as set forth above fail to teach the use of a wetting composition with the wet wipe wherein the composition comprises the claimed amount of organic solvents. However, Bliezner teaches that disposable wipes are typically pre-moistened with a composition containing from 91% to 99.5% water by weight of the composition which meets Applicant's limitation of less than substantially no presence of organic solvent (Col 4, lines 32-36). In view of this teaching it would have been obvious to one of ordinary skill to have employed the composition disclosed by Bliezner in conjunction with the wet wipe disclosed by Chang et al. One of ordinary skill would have recognized that the composition disclosed by Bliezner is equivalently suitable for wetting a wet wipe of the type disclosed by Chang et al.

With respects to claim 35, Chang et al discloses that the fibers of the nonwoven can have the a length of 15mm or less (Col 9, lines 5-9).

Regarding claims 45-47, Chang et al as set forth above fails to teach employing a wet wipe having the claimed thickness. However, since the wipe thickness is directly

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proportional to the strength of the wipe, it would have been obvious for one of ordinary skill to have determined the optimal wipe thickness through the process of routine experimentation.

11. Claims 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,423,804 to Chang et al in view of US 5,648,083 to Bliezsner in view of US 2001/0053753A1 to Engekhardt.

Regarding claims 29-31 Chang et al as set forth above fail to teach the use of a wetting composition with the wet wipe wherein the composition comprises the claimed amount of deionized water, preservatives, surfactants, silicone emulsions, emollients, fragrances, fragrance solubilizers and pH adjusters. However, Bliezner teaches that disposable wipes are typically pre-moistened with a composition containing 94% or more of water and various combinations of other ingredients including moistening agents or humectants, emollients, surfactants, emulsifiers, antimicrobial agents, skin protectants, fragrances and pH-adjusting agents (Col 2, lines 3-12). The composition also contains a silicone oil and an emulsifier (Col 3, lines 32-36). It is preferred that the composition contain from 91% to 99.5% water by weight of the composition (Col 4, lines 32-36). Since both Chang et al and Bliezsner et al are concerned with the same utility, it would have been obvious to have provided the wet wipe disclosed by Chang et al with the wetting composition disclosed by Bliezsner et al. One of ordinary skill would have been motivated by the desire to improve the in use characteristics of the resulting wet wipe.

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While Chang et al and Bliezsner et al as set forth above teach the use of fragrances in the binder, Chang et al and Bliezsner et al do not teach that a fragrance stabilizer is used. Engekhardt is directed to personal cleansing compositions and teaches that it is well known in the art to use a fragrance solubilizer to solubilize fragrances (pp 1, Col 2, [0013]). In view of this teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a fragrance solubilizer in the wetting composition of the wet wipe nonwoven as set forth above by Chang et al and Bliezsner et al motivated by the desire to eliminate fragrance gradients in said wetting composition.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex Wachtel whose telephone number is 571-272-1455. The examiner can normally be reached on 10:30am to 6:30pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Glenn Caldarola, can be reached at (571)-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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